

Remarks

Claims 1-31 are pending in this application. Claims 3-5, 7-12, 14, and 21-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b). The disclosure was objected to on the basis of informality. Claims 1, 2, 6, 13 and 15-17 are rejected under 35 U.S.C. 102(b); claims 1 and 18-19 are rejected under 35 U.S.C. 102(a); and claim 20 is rejected under 35 U.S.C. 103(a).

Specification Objections

Paragraph 0019 of the disclosure has been amended with an appropriate correction to change "t" to "to", as requested.

Claim Rejections

Withdrawn claim 11 has also been amended so that the "the longitudinal axis" on line 5 now reads "a longitudinal axis", as requested.

35 U.S.C. 102(b) Rejections

Claims 1, 2, 6, 13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Mysliwiec et al., U.S. Patent No. 6,145,919.

For a rejection to be proper under 35 U.S.C. § 102(b), every element and limitation found in the rejected claim must be found in the 102(b) reference. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, §14 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP §2131.

The Examiner is correct in stating that Mysliwiec et al. teaches a vehicle armrest support portion which is pivotably mounted in a vehicle door for movement between a horizontal use position and a vertical stowed position. However, claim 1 of the current Application has been amended to reflect that the "support portion [is] pivotally mounted with respect to the vehicle body for rotation between a first position in which the support portion is sufficiently horizontal to present itself for use by the vehicle occupant and a second position in which the support portion is stowed in a sufficiently vertical position as to provide more space for the

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occupant in the vehicle body *wherein rotation from the first position to the second position is downward.*". Mysliwiec teaches that the armrest (20) is pivotable upward from a use position to a stowed position, as shown in Figures 1, 2b, 2c, 5, 6 and 7. Figure 3 of the present invention and Figure 1 of Mysliwiec have been reproduced below for illustrative purposes only.

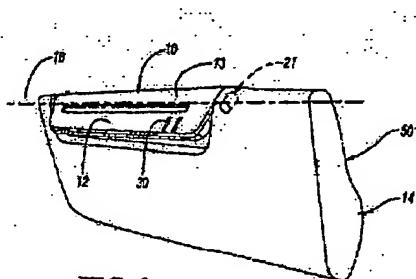
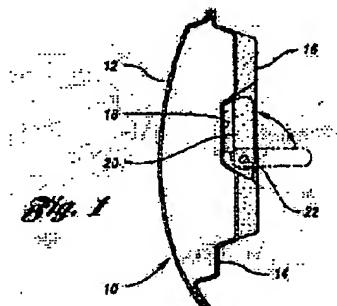


FIG. 3



Applicants' Figure 3

Mysliwiec Figure 1

Each and every element of the Applicant's device as set forth in amended claim 1 is not found, either expressly or inherently described, in Mysliwiec as *Verdegaal Bros.* and MPEP §2131 require. Therefore, the rejection of claim 1 and its dependents (claims 2, 6, 13 and 15-17) is believed to be overcome.

Correctly, the Examiner notes that the Mysliwiec device functions to automatically actuate the armrest – a limitation not expressly detailed in the elected claims of the present invention. Because claim 2 recites that the armrest is "power operated", pursuant to the principle of claim differentiation, claim 1 encompasses a manually operated armrest. This distinction is significant. The absence of the actuator and enabling of manual operation provides a less costly means and more compact means of stowing the support portion of the armrest. This distinction further merits the patentability of amended claim 1 and its dependents (claims 2, 6, 13 and 15-17) over the Mysliwiec reference.

35 U.S.C. 102(a) Rejections

Claims 1 and 18-19 are rejected under 35 U.S.C. 102(a) as being anticipated by McAndrew et al., U.S. Publication No. 2001/0052715.

As with a §102(b) rejection, for a rejection to be proper under 35 U.S.C. § 102(a), every element and limitation found in the rejected claim must be found in the 102(b) reference. See MPEP §2131.

The Examiner is correct in stating that the McAndrew reference teaches an armrest system with a pivotable panel portion having at least a mirror control. However, the Examiner is incorrect in stating that the second position of the panel, as illustrated in Figure 4 of the McAndrew reference, provides more space for the occupant. The second position, as claimed in Applicants' claim 1, is such "in which the support portion is *stowed* in a sufficiently vertical position as to provide more space for the occupant in the vehicle body." The panel in the McAndrew reference is not stowed or put away but merely rotated; it is thereby incapable of providing the additional space for the occupant. Moreover, the pivotable panel portion of the armrest system detailed in the McAndrew reference does not "present itself for use by the vehicle occupant" when in the horizontal position as recited in Applicants' claim 1. Indeed, the "first bank of controls... are mounted on and extend upwardly from a top surface of the panel" and are push or pressure-actuated so that if used by the vehicle occupant such controls would improperly activate. See McAndrew et al. paragraphs 13 through 14. Since these limitations of the Applicants' claims are not found in the McAndrew reference the rejection of claims 1 and 18-19 is improper.

35 U.S.C. 103(a) Rejections

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornchen et al. (WO 02/45996 A2) in view of Heimnick et al., U.S. Patent No. 4,619,478.

A proper rejection under 35 U.S.C. § 103(a) requires that the Examiner establish *prima facie* obviousness. As recited in the MPEP, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." MPEP § 2142. Three basic criteria must be met to establish *prima facie* obviousness. MPEP § 2143. First, there must be some suggestion or motivation to modify a reference or combine teachings. *Id.* Second, there must be reasonable expectation of success. *Id.* Third, the prior art reference or references must teach or suggest all the claim limitations. *Id.*

Applicants submit that the Examiner has not established *prima facie* obviousness with respect to claim 20. The claim incorporates and recites, "the support portion has at least one control device ... [which] provides occupant input command for adjustment of the armrest support portion position." The Examiner is correct in stating that Bornchen et al. teach an adjustable armrest for a vehicle including a pivotable support portion. However, as admitted by

the Examiner, Bornchen et al. do not teach that "the *support portion* has at least one control device ... for adjustment of the armrest support portion", as required by claim 20. The Examiner attempts to use the non-rotatable armrest of Heimnick et al. to establish a support portion having a control device which is not taught by Bornchen et al. However, Bornchen et al. provide no motivation or suggestion to place a control device for adjusting the support portion on the support portion. In fact, except for the manually operated handle 20, Bornchen et al. do not describe any control device, much less one positioned on the support portion. Neither do Heimnick et al. suggest a support portion rotatable between a use and a stowed position. Accordingly, the Bornchen et al. and Heimnick et al. references lack the necessary suggestion or motivation to modify or combine to achieve the claimed invention presented by the Applicants'. A general notion of "more convenient user access and/or more space on the vehicle for mounting other features" is not sufficient motivation within the art. Therefore, it would not have been obvious to one of ordinary skill in the art to locate armrest support portion controls on Bornchen et al.'s support portion to adjust the position of the armrest. The Examiner uses improper hindsight reconstruction based upon the Applicants' teachings and the rejection is therefore improper.

CONCLUSION

This Amendment is believed to be fully responsive to the Office Action mailed December 02, 2004. The amendments and remarks in support of the rejected claims are believed to place pending claims 1-2, 6, 13 and 15-20 in condition for allowance, which action is respectfully requested.

Respectfully submitted,

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Date: 2-24-2005

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